

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: May 18, 2005

Division: Engineering

Bulk Item: Yes X No

Department: Engineering

Staff Contact Person: David S. Koppel, P.E.
County Engineer

AGENDA ITEM WORDING: Approval to modify the Roadway Improvement Plan for old State Road 4A as described in Supplemental Agreement for Road and Bridge Funds between Islamorada Village of Islands, Florida and Monroe County, dated July 18, 2001.

ITEM BACKGROUND: When the Village of Islamorada incorporated, Monroe County agreed to fund \$969,000 for road improvements to Old State Road 4A.

PREVIOUS RELEVANT BOCC ACTION: On July 18, 2001, the BOCC approved a Supplemental Agreement for Road and Bridge Funds between Islamorada Village of Islands, Florida and Monroe County for work on Old State Road 4A.

CONTRACT/AGREEMENT CHANGES: None.

STAFF RECOMMENDATIONS: Approval as stated above.

TOTAL COST: \$ -0-

BUDGETED: Yes No X

COST TO COUNTY: \$ -0-

SOURCE OF FUNDS: Capital funds

REVENUE PRODUCING: Yes No X **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

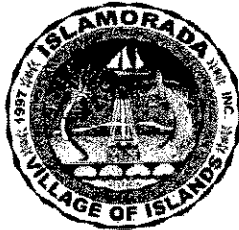

David S. Koppel, PE, County Engineer

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM #

MAYOR ROBERT JOHNSON
VICE MAYOR PATTY SCHMIDT
COUNCILMAN CHRIS SANTE



COUNCILMAN MICHAEL RECKWERDT
COUNCILMAN MIKE FORSTER

May 2, 2005

Dave Koppel
County Engineer
Monroe County
1100 Simonton Street, Room 2-216
Key West, FL 33040

Fax: (305) 295-4321

RE: Paving and Drainage Improvements on Old Highway - Upper Matecumbe Key

Dear Mr. Koppel:

The Village is hereby requesting that the Monroe County allow the Village to begin work for paving and drainage improvements to the remaining portions of State Road 4A. As you know, previous improvements made under this agreement have paved and provided drainage for State Road 4A up to Blackwood Drive. This request would provide much needed paving and drainage improvements to the remaining portion of State Road 4A from Blackwood Drive to the U.S. Highway 1 intersection. Enclosed is a map depicting the area for your review.

As we discussed, this work is consistent with the intent of the interlocal agreement although the area is being modified to include the remaining portion of State Road 4A which would complete paving and drainage for that corridor in its entirety.

Pursuant to Section 2 of the Agreement between Monroe County and Islamorada, Village of Islands dated July 18, 2001, this is a request for conceptual approval for all expenditures which will be made for improvements to "that portion of the formerly known State Road 4A or County Road 904," specifically on Upper Matecumbe Key. The project will require that the Village perform a topographic survey, geotechnical investigations, engineering design, construction documents and inspections, a competitive bid and construction activities in order to complete the improvements. The estimated cost for these activities is \$300,000.

Of the \$969,000 provided by the Interlocal Agreement, the Village's records indicate that there are \$318,000 funds remaining. Therefore, the Village is requesting that the remaining funds be used for the project described herein.

If you have any questions or require further information please contact me at (305) 664-2345 extension 231.

Sincerely,

Zully Williams
Public Works Director

Attachment

c: Bernie LaPira, Village Manager
Cindy Lawson, Deputy Village Manager

P.O. Box 568, Islamorada, FL 33036
305.664.2345 FAX 305.853.5357 www.islamorada.fl.us

SUPPLEMENTAL AGREEMENT
FOR ROAD AND BRIDGE FUNDS

between

ISLAMORADA VILLAGE OF ISLANDS, FLORIDA

and

MONROE COUNTY

This is a Supplemental Interlocal Agreement (this "Agreement") between ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, a Florida municipal corporation (the "VILLAGE"), and MONROE COUNTY, a political subdivision of the State of Florida (the "COUNTY"), entered into this 18th day of July, 2001.

WHEREAS, subsequent to the VILLAGE's incorporation, certain funds in the COUNTY's possession derived from taxes and assessments and other revenues originating from taxpayers and properties located within the VILLAGE remained in the COUNTY's budget and treasury; and

WHEREAS, pursuant to Chapter 97-348, Laws of Florida, the VILLAGE was incorporated on December 31, 1997 and all municipal type services, including planning functions, duties and authority became, after December 31, 1997, vested in the jurisdiction of the VILLAGE and the VILLAGE Council; and

WHEREAS, prior to the VILLAGE's incorporation, certain funds were budgeted by the COUNTY for services and projects within the VILLAGE, including, but not limited to, roadway improvements, planning assistance, parks and beach facilities, and other VILLAGE purposes; and

WHEREAS, such funds were budgeted but not expended by the COUNTY for such VILLAGE purposes; and

WHEREAS, an Interlocal Agreement (the "Interlocal Agreement") was entered into on June 14, 2001 between the VILLAGE and the COUNTY; and

WHEREAS, in the Interlocal Agreement the County agreed to allocate certain funds to the VILLAGE for improvements to that portion of the formerly known State Road 4A or County Road 904 situated within the municipal limits of the VILLAGE (the "Road"); and

WHEREAS, the COUNTY determined that the COUNTY purposes to be served by funding said project include improvements to the bicycle path and diversion of traffic from US-1.

NOW THEREFORE, in consideration of the promises, covenants, and obligations contained herein, the undersigned parties agree as follows:

1. Adoption Of Recitals. The above-referenced recitals are true and correct and incorporated herein.

2. Road Improvements. Pursuant to the Interlocal Agreement:

2.1 The COUNTY has allocated \$969,000 for improving that portion of the formerly known State Road 4A or County Road 904 situated within the municipal limits of the VILLAGE (the "Road").

2.2 The moneys specified in Section 2.1 shall be transferred to the VILLAGE by the COUNTY in increments proportionate to the extent of completion of improvements to the Road pursuant to a Roadway Improvement Plan (the "Plan") prepared by the VILLAGE and approved by the COUNTY.

2.3 The Plan shall include the design, planning, procurement of services, implementation and construction of improvements to the Road, and shall list all administrative expenses attributable to implementation of the Plan.

2.4 The Village Manager shall prepare and forward to the County Administrator within 60 days of execution of this Agreement, a copy of the Plan. The County Administrator will present the Plan to the BOCC for its approval, which will be deemed granted unless rejected by the BOCC within 30 days following the VILLAGE's submission of the Plan to the COUNTY.

3. Payments.

3.1 The VILLAGE shall submit invoices and requests for payment to the County upon completion of each phase of the Plan. The invoices shall include sufficient backup documentation to support the request and to meet the COUNTY's standard payment authorization requirements.

3.1.1 The requests for payment from the VILLAGE to the COUNTY may, at the election of the Village Manager, be in the form of either (i) a request for the COUNTY to

reimburse the VILLAGE for payments made by the VILLAGE pursuant to the Plan or (ii) a request for the COUNTY to directly pay the VILLAGE's contractors and/or consultants for services performed.

3.2 The COUNTY shall timely forward the VILLAGE's documentation to the Clerk of the Court for Monroe County, Florida (the "Clerk") to pay all amounts due the VILLAGE under this Agreement.

3.3 In the event the County Clerk requires additional documentation, the COUNTY will so advise the VILLAGE in writing within fifteen days after notification by the Clerk.

3.4 The COUNTY shall make payments to the VILLAGE within 45 days from the date of the Clerk's approval of each invoice.

4. Entire Agreement. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein. Nothing contained herein shall supersede or modify anything contained within the Interlocal Agreement except as to the Road and Bridge Funds. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

5. Assignment. Neither this Agreement nor any term or provision hereof or right hereunder shall be assignable by any party and any attempt to make such assignment shall be void.

6. Notices.

6.1 Whenever any party desires to give notice unto the other, it must be given by written notice, sent by registered United States mail, with return receipt requested, or by a nationally recognized overnight express mail service (e.g., Federal Express), addressed to the party for which it is intended, at the place last specified, and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph.

The parties designate the following as the respective places for giving notice:

For the Village: Islamorada, Village of Islands
Charles W. Baldwin, Village Manager
P.O. Box 568
Islamorada, Florida 33036
Phone: (305) 664-2345
Facsimile: (305) 664-2399

With a copy to: Weiss Serota Helfman
Pastoriza & Guedes, P.A.
Village Attorneys
Attention: Nina L. Boniske, Esq.
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133
Phone: (305) 854-0800
Facsimile: (305) 854-2323

For the COUNTY: James L. Roberts
County Administrator
5100 College Road
Key West, Florida 33040
Phone: (305) 292-4441
Facsimile: (305) 292-4544

A copy to: James Hendrick, Esq.
County Attorney
P.O. Box 1026
Key West, Florida 33041-1026
Phone: (305) 292-3470
Facsimile: (305) 292-3516

6.2 Unless otherwise required by law, any notice sent hereunder shall (subject to proof of receipt or refusal of same) be deemed to have been delivered on the same day if hand-delivered, on the next business day if sent by overnight courier, or on the day of receipt or refusal, if sent by certified or registered mail.

7. Amendments. This Agreement may be modified only by an agreement in writing authorized by the VILLAGE Council and the Board of County Commissioners of Monroe County.

8. Indemnification. To the extent allowed by law, each party hereto shall indemnify and save harmless the other from any and all claims, liability, losses, and causes of action which may arise out of the other's actions in fulfillment of this Agreement.

9. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Florida, and any proceedings arising in any matter pertaining to this Agreement shall, to the extent permitted by law, be held in the Upper Keys Division, Monroe County, Florida.

10. Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, then shall be deemed severable, and in this Agreement, shall remain unmodified and in full force and effect.

11. Default/Remedies. In the event of a failure to perform or a breach of any obligation of this Agreement by either the COUNTY or the VILLAGE, which failure or breach is not cured within thirty (30) days of receipt of written notice thereof, such action shall constitute a default of this Agreement.

11.1 If and when any default of this Agreement occurs, the non-defaulting party may avail itself of any legal or equitable remedies that may apply, including, but not limited to, actual damages, injunctive relief and specific performance of this Agreement.

11.2 Such remedies may be exercised in the sole discretion of the non-defaulting party.

11.3 Nothing contained in this Agreement shall limit either party from pursuing any legal or equitable remedies that may apply in the event of default.

12. Execution Date. The date of execution of this Agreement shall mean the last day upon which it becomes fully executed by the last party to sign.

13. Joint Preparation. The preparation of this Agreement has been a joint effort of the parties and the resulting document shall not, solely as a matter of judicial construction, be construed more strictly against, or more favorably to, one of the parties than the other.

14. Further Assurances. The COUNTY and the VILLAGE each agree to execute and deliver to the other such further documents or instruments as may be reasonable and necessary to the performance of the terms, covenants and conditions of this Agreement.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same Agreement.

16. Non-waiver. No waiver by the COUNTY or the VILLAGE of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such party. No delay or omission in the exercise of any right or remedy accruing to the COUNTY or the VILLAGE upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by the COUNTY or the VILLAGE of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained.

17. Termination/Term. This Agreement will expire on July 1, 2006, or upon completion of all acts contemplated by this Agreement, whichever shall occur first, unless extended by other provisions contained herein (the "Termination Date").

17.1 The parties recognize that both the VILLAGE and the COUNTY are making significant time and monetary investments in the performance of this Agreement. Accordingly, both parties agree that this Agreement shall not be terminated by either party unless one party is in default and fails to cure said default pursuant to Section 11 of this Agreement. In the event of such termination, the non-defaulting party shall provide the defaulting party thirty (30) days written notice of termination. The non-defaulting party shall be entitled to any and all remedies afforded by law, including, but not limited to, specific performance, injunctive relief, and monetary damages.

17.2 Except as otherwise provided by this Agreement, prior to the Termination Date, all acts contemplated herein shall be completed, and the COUNTY will pay to the VILLAGE all payments due the VILLAGE under this Agreement.

18. Survival. The terms and obligations of the parties under this Agreement shall survive the Termination of this Agreement.

19. Filing Required. This Agreement shall be filed with the Clerk of the Circuit Court as required by Section 163.01(11), Florida Statutes, as currently enacted and as may be amended from time to time.

20. Attorneys' Fees. In the event of any controversy, claim or dispute between the parties arising from or relating to this Agreement including, but not limited to, the enforcement of any indemnity provision, the prevailing party shall be entitled to recover reasonable costs, expenses and attorneys' fees including, but not limited to, court costs and other expenses through all appellate levels.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under such signature.

ISLAMORADA, VILLAGE OF ISLANDS,
a municipal corporation of the State of Florida

By: Frank R. Kulisky
Frank R. Kulisky, Mayor

Dated: 7/17/01

ATTEST:

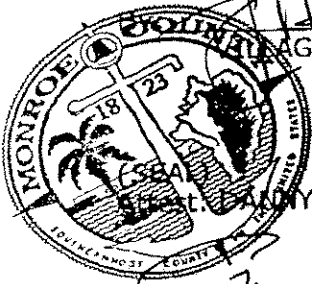
By: Carol Simpson
VILLAGE Clerk

Dated: 7/17/01

Approved as to form
and legal sufficiency:

[Signature]
VILLAGE Attorney

Dated: 7/17/01



Approved as to form
and legal sufficiency:
By: Jamie Hancock
Deputy Clerk

Dated: July 18, 2001

Approved as to form
and legal sufficiency:

By: [Signature]
COUNTY Attorney

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: George R. Neugent
George Neugent, Mayor

George Neugent, Mayor

Dated: _____

Roadway Legend

----- FDOT owned

— Paved

Proposed Improvement Schedule

----- 2005

----- 2006

----- 2007

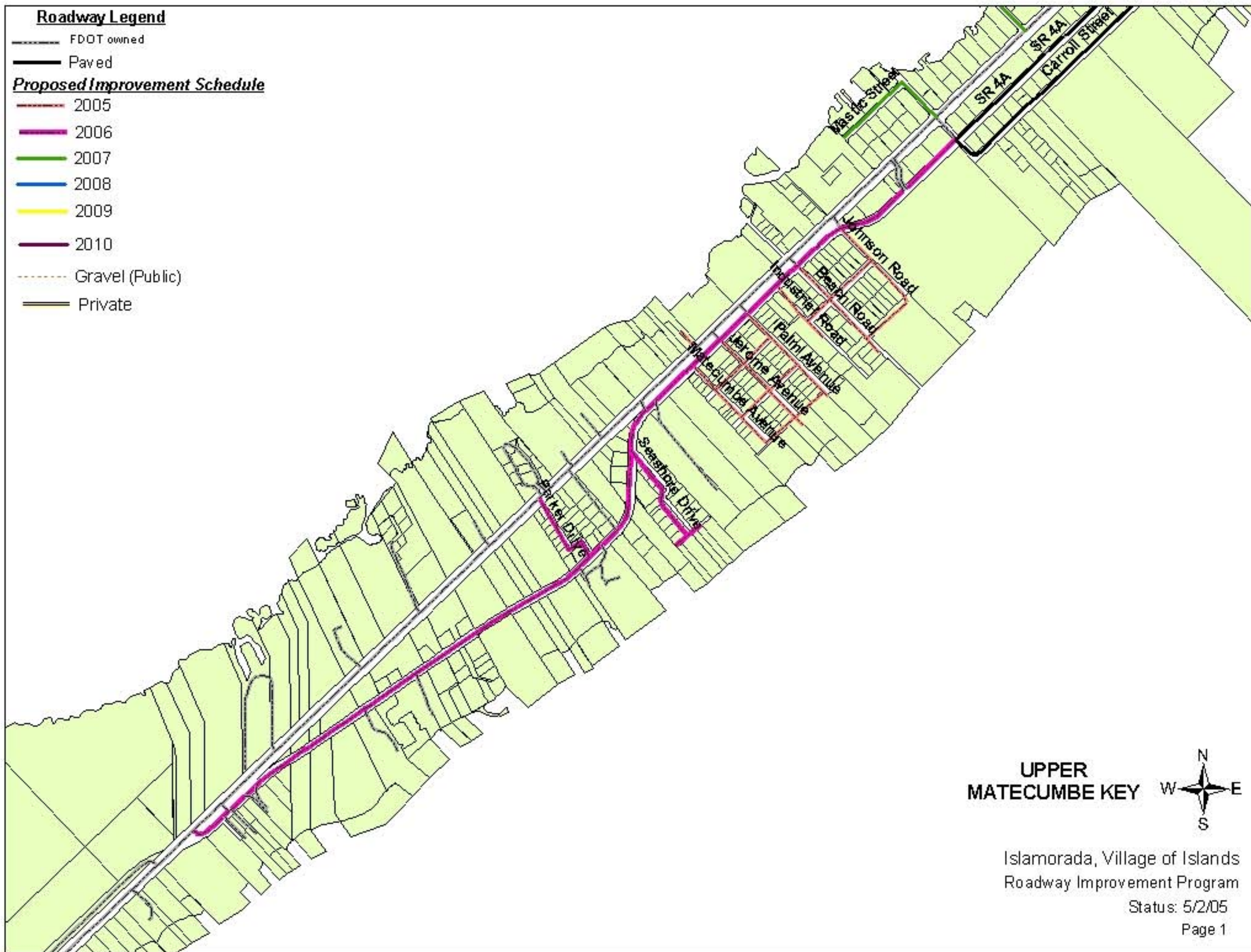
----- 2008

----- 2009

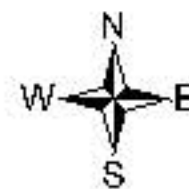
----- 2010

----- Gravel (Public)

----- Private



UPPER
MATECUMBE KEY



Islamorada, Village of Islands
Roadway Improvement Program

Status: 5/2/05

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